IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

Crl.Rev.Pet.No. 487 of 2000

CRA.78/1998 of SESSIONS COURT, THRISSUR
SC.64/1996 of ADDL. ASST. SESSIONS COURT, IRINJALAKUDA

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REVN. PETITIONERS/APPELLANTS/ACCUSED:

1. JOSHY @ CHANDRASEKHARAN, S/O KUMARAN, PUNNAKKAL, EMMAD DESOM, PAPPINIVATTAM VILLAGE, THRISSUR DISTRICT.

2. JESBIN, S/O RAJAN, DO. DO.

3. SURENDRAN @ SURESH, S/O KARUNAKARAN, MANNAMPARAMBIL HOUSE, VEKOD DESOM, S.N.PURAM VILLAGE, THRISSUR DISTRICT.

4. KUNJI MOHAMMED, S/O HYDROSE, PONAKUZHI, EMMAD DESOM, PAPPINIVATTAM VILLAGE, THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SMT.MINI JOHN PAREMALIL

RESPONDENTRESPONDENT/COMPLAINANT:

STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.R.P.No. 487 of 2000

ORDER

Petitioners, along with nine other accused, were charge sheeted by the C.I. of Police, Valapad in Crime No.107/95 of Mathilakam Police station for offences punishable under Sections 143, 148, 341, 326 and 307 IPC read with Section 149 thereof on the allegation that while PWs 6 and 7, who were BJP workers, were proceeding on a motor bike at about 9.15 hours in the night on 15.3.1995 from Kuzhuvilangu to Vemballoor, the accused waylaid them and they were beaten with iron rods and PW7 was cut with a sword in prosecution of their common intention to do away with PWs 6 and 7, on account of the animosity the accused, who belonged to the rival political party, namely Marxist Communist Party, had against PWs 6 and 7. On receipt of final report, the Judicial First Class Magistrate,

Kodungallur, after complying with all legal formalities, committed the case to the Sessions Division Thrissur as against ten of the accused, as the others were absconding. The Sessions Judge made over the case to the Additional Assistant Sessions Court, Irinjalakuda for trial and disposal.

2. On appearance of the accused, pursuant to issuance of summons, the trial court framed charge against them, after hearing preliminary arguments of the prosecution and the defence, read over and explained it to them and questioned them. Thereupon, all the accused pleaded not guilty and consequently, a trial of the case was conducted.

3. On the side of the prosecution, PWs 1 to 12 were examined, Exhibits P1 to P5(a) and Exhibits D1 to D2(a) were got marked and MO1 series and MOs 2 and 3 were got identified. On the prosecution closing their evidence, the accused were questioned under Section 313 Cr.P.C. Thereupon, they generally denied all incriminating circumstances appearing in

evidence against them and maintained that they are innocent. According to them, the case is one falsely foisted against them. The Asst. Sessions Judge, after hearing the prosecution and the defence, was of the view that the case is not one for acquittal under Section 232 Cr.P.C. Hence, he called upon the accused to enter upon their defence. However, the accused did not adduce any evidence in defence.

4. The Asst. Sessions Judge considered the case in the light of the evidence adduced as aforesaid and found that the prosecution has failed to establish the guilt as against Accused Nos.5 to 10 and acquitted them of all the offences, for which they stood charged; found Accused Nos.1 to 4 not guilty of the offence under Section 307 IPC and acquitted them of the charge thereunder, but found them guilty of the offences under Section 143, 148, 324, 326 and 341 IPC read with Section 149 thereof and sentenced them to undergo rigorous imprisonment for a term of five years and to pay a fine of

Rupees ten thousand each and in default to undergo rigorous imprisonment for a further term of two years each for offence under Section 326 IPC read with Section 149 thereof; to undergo rigorous imprisonment for one year and to pay a fine of Rupees one thousand each and in default to undergo rigorous imprisonment for a further term of six months under section 324 IPC read with Section 149 thereof; to undergo rigorous imprisonment for a term of three months each for offence under Section 148 IPC red with Section 149 thereof; to undergo rigorous imprisonment for one month each for offence under Section 143 IPC read with Section 149 thereof and to undergo simple imprisonment for one week each for offence under Section 341 IPC read with Section 149 thereof. It was also provided that the substantive terms of imprisonment shall run concurrently.

5. Accused Nos.1 to 4, who were so convicted and sentenced, who are the petitioners in this revision, filed Crl.A.No.78/98 before the sessions

Court, Thrissur. The Sessions Judge, vide judgment in the said appeal dated 29.4.2000, confirmed the conviction of the petitioners. All the same, substantive sentence of imprisonment awarded for offence under Section 326 IPC was reduced from five years to rigorous imprisonment for three years each. The sentences in all other respects were confirmed. Hence, this revision.

6. It is contended before me by the learned counsel for the petitioners that while the injured PWs 6 and 7 were being taken to the hospital, the brother of PW6 has, on the way, stepped into the police station and gave information of the occurrence to the police and that is the first information that was received by the police in relation to the occurrence, but that is withheld and that FIR lodged, on the basis of a subsequent F.I. Statement given in the morning, on the next day is one implicating falsely the political opponents, after the workers of the BJP, conspiring with the injured. The argument is so advanced, on

the basis of an answer obtained from PW6, that on the way to the hospital information was given to the police at the police station. What PW6 stated is that on the way to the hospital, information was given at the police station by his younger brother Sureshbabu, who just entered into the police station, told them of the occurrence and accompanied them to the hospital. This only means that police was informed that a cognizable offence has taken place and that the injured are being taken to the hospital so as to enable them to take further action in the matter. From this, there is no insinuation that an F.I. statement had been given by the brother of PW6, on which a crime could be registered. Hence, the argument advanced is devoid of merit and is repelled.

7. It is further contended by the learned counsel for the petitioners that there is discrepancy between the evidence tendered by the two injured, namely, PWs 6 and 7, as according to PW6, the assailants were 10-15, whereas, in cross-

examination, PW7 has stated that the number of assailants could be 10, 30 or 50. The general statement given by PW7 is immaterial when PW6 has stated specifically that the assailants were ten to fifteen and has given the names of few of the assailants as well. The names of the assailants given by PW6, at the time of giving the F.I. statement, are of five accused only, of whom, the first named person Shihab is one among the absconding accused. The other named accused 2 to 5 in Exhibit P5(a) FIR are the petitioners. Ten others, who were identifiable at sight, though arrayed as accused in the final report and were tried, the trial court has found that there is no evidence to establish their complicity in the commission of the crime. It was, therefore, that the petitioners alone were found guilty and convicted.

8. On going through the evidence in the case, I do not find any infirmity, illegality or incorrectness in the appreciation of evidence by

the courts below in coming to the conclusion that the petitioners are guilty of the offences punishable under Sections 143, 148, 341, 324 and 326 IPC read with Section 149 thereof. The sentence awarded by the trial court, as modified by the judgment of the Sessions Court in appeal, is moderate and reasonable and no interference is called for in the sentence so awarded to the petitioners, considering the entire circumstances of the case.

This revision, in the circumstances, is devoid of merit and is dismissed.

15th January, 2007 (K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

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ORDER

15th January, 2007